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NORTH CAROLINA, WITH SPECIAL
REFERENCE TO THE JEWS.

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THE STRUGGLE FOR RELIGIOUS LIBERTY IN NORTH CAROLINA, WITH SPECIAL REFERENCE TO THE JEWS.

BY LEON HÜHNER, M. A., LL. B.

The old proverb that prejudice is the daughter of ignorance is strikingly illustrated in the history of religious liberty in the original Colonies. Those Colonies where Jews had settled in numbers were among the first to adopt the principle of civil equality, while those where the Jew was known little more than in name were the last to accept it.

In justice it must be said, however, that the great principle of liberty of conscience had been adopted by practically all the original States even prior to the Revolution. Catholics, Jews, Mahommedans and even heathens were alike protected in their respective beliefs.

Nevertheless, a few of the original States prescribed a religious test for office. In these, Catholics, Jews, and several other sects were precluded from attaining political honors.

In the course of time the injustice of a religious test was generally recognized and swept away. Two States alone continued to cling tenaciously to this relic of bigotry. Neither had any appreciable Jewish population, nor could either boast a representative congregation, even half a century after the Declaration of Independence. The States referred to are New Hampshire¹ and North Carolina, and the present paper will

¹ New Hampshire has the unenviable distinction of having been the last of the thirteen original States to grant political equality to the Jews. Prior to 1876 Jews and Catholics were excluded from certain offices. (Governor, House of Representatives, Senate.) See "The Constitution of New Hampshire as amended by the Constitutional Convention, 1876." (Concord, 1877). It was probably the only State in the Union, at that late date, where this was the case.

be devoted to a sketch of the long and interesting struggle for religious liberty within the latter.

North Carolina formed part of the original grant made by Charles II to a number of noblemen, who included the famous Earl of Shaftesbury and Lord Berkeley. The original constitution was drawn up by John Locke, the famous philosopher, and provided in the very broadest terms, for liberty of conscience.²

Early in the 18th century, however, the Episcopal Church became the established church in fact as well as in law.³ While there was religious toleration of Dissenters there was not religious liberty in its broadest sense;⁴ the colony was one of the very few that had an established church, and that establishment made its influence felt down to the time of its abolition just prior to the American Revolution. All citizens were required to pay toward its support, dissenting clergymen were denied the privilege of performing even the marriage

² See Stephen Beauregard Weeks, "The Religious Development in the Province of North Carolina," in Johns Hopkins University Studies, 10th series, Vols. V and VI, pp. 13, 39. Also, E. W. Caruthers, "A Sketch of the Life and Character of the Rev. David Caldwell," Greensborough, N. C., 1842, p. 54.

For a detailed discussion of Locke's Constitution and its provisions, see article by the present writer on "The Jews of South Carolina from the Earliest Settlement to the End of the American Revolution," *Publ. Amer. J. Hist. Soc.*, Vol. 12, p. 39, etc., where additional authorities are given. See also, *The North Carolina Hist. and Genealogical Register*, Vol. 3, No. 1, p. 59.

³ In the autumn of 1701 the Assembly passed an act making the Church of England the established church of the Colony. Stephen B. Weeks, "The Religious Development in the Province of North Carolina," *supra*, pp. 36, 39.

⁴ "Beginning with 1701, the Episcopal Church was for three-quarters of a century the legal church in North Carolina, and while there was toleration for dissenters, there was not freedom of conscience and soul liberty in the absolute sense of those terms." S. B. Weeks, *supra*, p. 1, and on the same page, the writer states "There was an established church, there was positive persecution, there was not religious freedom."

ceremony. The latter privilege was finally granted, but only under certain burdensome restrictions. Governor Tryon, the King's representative, frankly admits "That by many of the inhabitants, the Establishment was regarded as even more oppressive than the Stamp Act."⁵

The Dissenters had kept up a vigorous fight against the Establishment;⁶ but no sooner had their efforts been crowned with success, than these very men, who had fought their own cause so valiantly, became the opponents of that complete religious liberty which now lies at the very foundation of American institutions.

They took an uncompromising and decided stand against the complete emancipation of Roman Catholics, Jews, and others. The remark once made concerning the Puritans, might indeed be appropriately applied here. "These men loved Religious Liberty so much, that they desired to keep it all for themselves."⁷

Shortly after the adoption of the Declaration of Independence the Congress of the State of North Carolina, assembled at Halifax, December 17, 1776, "for the purpose of establishing a Constitution or form of government."⁸ Two of the leading subjects in the minds of the dominant faction were first, the prevention of an established church, and second, the exclusion of Roman Catholics from political office.

In addition to the prejudice already existing, it happened that several of the members of the Convention were

⁵ *Ibid.*, p. 11, etc. See also p. 65.

⁶ *Ibid.*, p. 65. See also, S. B. Weeks, "Church and State in North Carolina," in Johns Hopkins University Studies, 11th series, Vols. V-VI.

⁷ "The persecuted Pilgrims of Massachusetts were such zealous lovers of civil and religious freedom, that they would fain keep it all to themselves." Address of Hon. William Gaston, in Proceedings and Debates of the Convention of North Carolina, 1835 (Raleigh, 1836), p. 290.

⁸ The Public Acts of the General Assembly of North Carolina, revised by Francois-Xavier Martin, Newbern, 1804, Vol. 1, p. 191.

clergymen who were uncompromising on both subjects referred to. Prominently among these might be mentioned the Rev. David Caldwell, a Presbyterian divine, and one of the most influential men in that historic assembly.

As a matter of justice, it must be said, however, that the Convention unanimously recognized, and to the fullest extent, the right of every individual to worship in his own way. The provisions of the Constitution of 1776 provided for liberty of worship, and even excluded clergymen from being members of the Senate, House of Commons, or Council of State.⁹

The great and only stain upon the proceedings of this Convention was its illiberality when the question of holding office came up for discussion. The objectionable clause adopted, was the product of clerical influence, and to the Rev. Mr. Caldwell is attributed the doubtful honor of having framed and fathered Section 32, which was incorporated in the Constitution.¹⁰ That section reads as follows:

“That no person who shall deny the being of God or the

⁹ *Ibid.*, p. 191. “A Declaration of Rights made by the representatives of the Freemen of the State of North Carolina.”

Section XIX provided “That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience.”

Section XXXI prohibited clergymen, while exercising their pastoral function, from being members of the Senate, House of Commons, or Council of State.

Section XXXIV provided “That there shall be no establishment of any one religious church in this State in preference to any other; neither shall any person on any pretence whatsoever be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay for the purchase of any glebe or the building of any house of worship or for the maintenance of any minister or ministry contrary to what he believes right . . . but all persons shall be at liberty to exercise their own mode of worship,” etc. (Constitution. *Ibid.*, p. 195.)

¹⁰ W. H. Foote, “Sketches of North Carolina,” N. Y., 1846, p. 240. See also, “A Sketch of the Life and Character of the Rev. David

truth of the Protestant religion or the Divine Authority, either of the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the Civil Department within this State.¹¹

This section was doubtless aimed primarily at Roman Catholics. The prohibition being a sweeping one, however, necessarily included Jews, Quakers, Mohammedans, Deists, and others.

But it would be unfair to say, that the views embodied in Section 32 went unchallenged. Religious liberty, in its broadest sense, had indeed powerful champions in the Convention and, though these were in the minority, they included the very greatest sons of North Carolina. James Iredell,¹² and Governor Johnston,¹³ need only be mentioned in this connection.

Caldwell, D.D.," by the Rev. E. W. Caruthers, A. M., Greensborough, N. C., 1842, pp. 190-191. Also p. 248. In this connection Caruthers makes the following remark: "It is said, I know not on what authority, that he drafted the article which excludes ministers of the Gospel as well as one which excluded Roman Catholics from holding offices under the government; and if so, it is an evidence, not only of his strong attachment to liberty, but of his vigilance in guarding against everything which might lead to a union of Church and State."

¹¹ The Public Acts of the General Assembly of North Carolina, revised by Francois-Xavier Martin, Newbern, 1804, Vol. I, p. 195, etc.

¹² Iredell was subsequently the leader of the Federalists in North Carolina, and in 1790 was appointed by Washington an associate justice of the U. S. Supreme Court. Iredell County was named after him in 1788. See Appleton's Cyc. of Amer. Biog., Vol. III.

¹³ Samuel Johnston (1733-1816), one of the most distinguished Revolutionary patriots of North Carolina. He was a member of the first two Provincial Congresses and presided over the third and fourth. In 1775 he was elected chairman of the Provincial Council and virtually became Governor of the State. Member of the Continental Congress of 1781-2, and in 1788 became Governor of the State. He was president of the convention that adopted the Federal Constitution, and later became a U. S. Senator. See Appleton's Cyc. of Amer. Biog., Vol. III.

The spirit which dominated the Convention in 1776 found its way into the Federal Convention of 1787 as well. Though "Elliot's Debates" inform us that the clause abolishing religious tests in the Federal Constitution passed unanimously,¹⁴ *Madison expressly reports that North Carolina alone voted against it.*¹⁵

When the Federal Constitution was submitted to North Carolina for adoption, the whole subject was again brought to the front for fuller and more thorough discussion.

The State Convention convened at Hillsborough, July 21, 1788.¹⁶ It had been preceded by considerable agitation, because it was strongly objected that the instrument contained no guarantee for religious freedom. So high did the excitement run that pamphlets were actually circulated, pointing out in all seriousness the possible danger of the Pope being elected President, should the Constitution be adopted. A pamphlet of this kind was even most gravely discussed by various speakers in the Convention.¹⁷

¹⁴ Elliot's Debates, Wash., 1836, Vol. I, p. 277.

¹⁵ See also Debates on the Adoption of the Federal Constitution as reported by James Madison, Wash., 1845, Vol. V, p. 498.

¹⁶ "For the purpose of deliberating and determining on the Constitution recommended by the General Convention at Philadelphia the 17th day of September, 1787." See Proceedings and Debates of the Convention of North Carolina, etc., Edenton, MDCCLXXXIX.

¹⁷ *Ibid.*, p. 222, etc. Iredell in the course of his address refers to a pamphlet wherein "the author states as a very serious danger that the Pope of Rome might be elected President." "I confess," says Iredell, "this never struck me before, and if the author had read all the qualifications of a President, perhaps his fears might have been quieted."

See also Governor Johnston's address. *Ibid.*, p. 225, etc.

Also Mr. Lancaster's Address, *ibid.*, p. 242, where the following appears: "Let us remember that we form a government for millions not yet in existence. . . . In the course of four or five hundred years, I do not know how it will work. This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it." See also *ibid.*, p. 239.

On July 30, 1788, the Rev. Henry Abbot, a Baptist minister, and member of the Convention, opened the discussion. After airing his fears of Roman Catholics,¹⁸ he said: "The exclusion of religious tests is by many thought dangerous and impolitic. They suppose that if there be no religious test required, Pagans, Deists, and Mahometans might obtain offices among us, and that the Senate and Representatives might all be Pagans."¹⁹

Iredell, one of the most distinguished members, replied in a splendid address opposing all religious qualifications for office.²⁰

¹⁸ *Ibid.*, p. 217. The following occurs in his address: "It is feared by some people that by the power of making treaties, they (the government) might make a treaty engaging with foreign powers to adopt the Roman Catholic religion in the United States, which would prevent the people from worshipping God according to their own consciences. . . . Many wish to know what religion shall be established. I believe a majority of the community are Presbyterians. I am for my part against any exclusive establishment, but if there were any, I would prefer the Episcopal."

¹⁹ Proceedings and Debates of the Convention of North Carolina, etc., Edenton MDCCLXXXIX, p. 218. Continuing, the speaker said: "Every person employed by the General and State Governments is to take an oath to support the former. Some are desirous to know how and by whom they are to swear, since no religious tests are required, whether they are to swear by Jupiter, Minerva, Proserpine or Pluto. We ought to be suspicious of our liberties," etc.

²⁰ *Ibid.*, p. 218, etc. "Every person," said he, "in the least conversant in the history of mankind, knows what dreadful mischiefs have been committed by religious persecutions. Under the colour of religious tests the utmost cruelties have been exercised. Those in power have generally considered all wisdom centered in themselves, that they alone had the right to dictate to the rest of mankind, and that all opposition to their tenets was profane and impious. The consequence of this intolerant spirit has been, that each church has in turn set itself up against every other. . . . America has set an example to mankind to think more modestly and reasonably; that a man may be of different religious sentiments from our own, without being a bad member of society.

He condemned the folly of the Test Acts in England, pointing out that only the really conscientious were prevented from holding office there, while the unscrupulous politicians regularly conformed.²¹

"But it is objected," he continued, "that the people of America may perhaps chuse Representatives who have no religion at all, and that Pagans and Mahometans may be admitted into offices. But how is it possible to exclude any set of men without taking away the principle of religious freedom, which we ourselves so warmly contend for? This is the foundation on which persecution has been raised in every part of the world. The people in power were always in the right and everybody else wrong. If you admit the least difference, the door to persecution is opened."²²

The principles of toleration, to the honour of this age, are doing away with those errors and prejudices which have so long prevailed, even in the most intolerant countries. . . . I consider the clause under consideration as one of the strongest proofs that could be adduced, that it was the intention of those who formed this system, to establish a generous religious liberty in America."

²¹ *Ibid.*, p. 219, etc. "The intention was, to exclude all persons from offices but the members of the Church of England. Yet it is notorious that Dissenters qualify themselves for offices in this manner, though they never conform to the Church on any other occasion, and men of no religion at all, have no scruple to make use of this qualification. . . . Happily no sect here is superior to another. As long as this is the case, we shall be free from those persecutions and distractions with which other countries have been torn." . . .

²² *Ibid.* "It would be happy for mankind," he proceeded, "if religion was permitted to take its own course and maintain itself by the excellence of its own doctrines. . . . This article is calculated to secure universal religious liberty by putting all sects on a level, the only way to prevent persecution."

In this address the speaker also discussed the liberality to be employed in administering oaths not only to Christians and Jews but also to others.

The possibility of Jews holding political office also came under discussion. Governor Johnston, claiming that before Jews or Mohammedans could become President or hold office, either the people at large must be of the same turn of mind, or, to use his own words, "if any persons of such a description should, notwithstanding their religion, acquire the confidence and esteem of the people of America by their good conduct and practice of virtue, they may be chosen."²³

On the other hand, the Rev. David Caldwell urged that liberality "was an invitation for Jews and Pagans of every kind to come among us." "I think," said he, "that in a political view, those gentlemen who formed this Constitution should not have given this invitation to Jews and Heathens."²⁴

After considerable discussion, the narrower view prevailed.²⁵ The Convention resolved neither to ratify nor to reject the Constitution, but that a Declaration of Rights be laid before Congress and twenty-six amendments proposed. North Carolina was therefore unrepresented in the extra session of the first Congress which adopted the first amendment, "That Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof."

This amendment was partly a concession to that State,

²³ *Proceedings and Debates of the Convention of North Carolina, etc., Edenton, MDCCLXXXIX, p. 225, etc.* In view of the large Jewish immigration in recent years, the following argument of Johnston seems curious. Replying to Caldwell, he admitted the possibility of Jews, Pagans, etc., emigrating to the United States, "yet," said he, "they could not be in proportion to the emigrations of Christians who should come from other countries, that in all probability, the children even of such people would be Christians."

²⁴ *Ibid.*, p. 226, etc. Mr. Lancaster, an ardent supporter of Caldwell, also spoke at length on the possibility of Papists and Mahomedans becoming President, should the instrument be ratified.

²⁵ *Ibid.*, p. 226. Among other splendid addresses in favor of religious liberty during the session, one by Mr. Spencer deserves particular mention.

which thereupon adopted the Constitution at Fayetteville, November 21, 1789.²⁶

Despite all this prejudice, Article XXXII of the State Constitution soon came to be regarded a dead letter. In the face of it, both Catholics and Jews were elected members of the Legislature, and it has been well said, that though its provisions were aimed primarily against Catholics, "it was never interpreted against them."²⁷ As a matter of fact a Catholic was even elected Governor in 1781.²⁸

The article did not receive elaborate discussion, however, until 1809, when curiously enough, the whole subject came prominently to the front in the case of Jacob Henry, a Jew.²⁹

Mr. Henry had been elected a member of the Legislature³⁰ for Carteret County and had served throughout the year 1808. He had apparently been re-elected in 1809, and then a fellow member, actuated by some spiteful motive, asked to have his seat declared vacant on account of his faith.

It may not be amiss here to give some account of what little we know concerning Jacob Henry. He was possibly

²⁶ See Stephen B. Weeks' "Church and State in North Carolina," Johns Hopkins University Studies, 11th Series, V-VI, p. 61.

²⁷ Judge Toomer subsequently claimed that the clause was merely "a declaration of principles, not a proscription of individuals." Supporters of the test even asserted, that it was not intended to keep individuals from holding office, but that it was to be regarded as "hidden thunder" to be used when needed. See Proceedings and Debates of the Convention of 1835, Raleigh, 1836, pp. 244, 310.

²⁸ Thomas Burke. See Proceedings and Debates of the Convention of 1835, Raleigh, 1836, p. 319.

²⁹ Historical Sketches of North Carolina from 1584 to 1851, compiled from Original Records, Official Documents, and Traditional Statements, etc., by John H. Wheeler, late Treasurer of the State, Philadelphia, 1851. Vol. II, p. 74. "This was the first time in the history of the State that this question had been made."

³⁰ House of Commons. *Ibid.*, p. 76.

the brother of Michael Gratz, of Philadelphia.” Jacob Gratz had assumed the name of Henry, and a paper concerning him was presented by Judge Sulzberger before this Society some years ago.” During the Revolution he seems to have gone South, and William Croghan, writing to Michael Gratz, from Charleston, in April, 1780, intimates making search for him. Croghan’s letter expressly states: “I am uncertain where your brother is, otherwise should write.”³³

It is not at all unlikely, therefore, that he subsequently settled in North Carolina, and if this surmise be correct, he was about sixty or sixty-five years of age at the time when the question of his right to hold office was raised.

Wheeler, the historian, asserts that Henry’s seat was actually vacated.³⁴ Investigation proves, however, that the contrary was the fact.³⁵ Mr. Henry boldly and successfully defended his

³¹ A famous merchant in Revolutionary days; the father of Rebecca Gratz, who was the friend of Washington Irving.

³² “Note on Jacob Henry and the Gratz Family,” by Hon. Mayer Sulzberger, presented at meeting of Amer. J. Hist. Society, Dec., 1897.

³³ Robert Wilson Gibbes, “Documentary History of the American Revolution (Vol. 1776-82), 1857, pp. 129, 133, 134.

A Jacob Henry appears also among the names of patriot militia prisoners held by the British on the prison ship Torbay, 1781. In the same list appears the name of Jacob Cohen and other decidedly Jewish names. See MS. copy of letter to General Greene in possession of Lenox Library; Emmet Collection No. 15,670; American War, 1776-82, Vol. 2; Leslie Papers. Also Gibbes, “Documentary History of the American Revolution, 1781-2, pp. 74-5. See also “The Jews of South Carolina,” by the present writer, in Publ. Amer. J. Hist. Soc., Vol. 12, pp. 55-6.

³⁴ Historical Sketches of North Carolina from 1584 to 1851, compiled from original Records, Documents, etc., by John H. Wheeler, late Treasurer of the State, Philadelphia, 1851, Vol. II, p. 74.

³⁵ Address of the Hon. William Gaston reported in “Proceedings and Debates of the Convention of North Carolina, 1835”

rights, though a most curious construction of Article XXXII was adopted in order to enable him to retain his seat.

Henry seems to have been popular with his constituents and also to have had many strong friends among the leaders in the House. Besides this, it so happened also, that two of the most prominent men of the State at the time were members of the Roman Catholic Church. One was Judge Taylor, the other the Hon. William Gaston. The former had been a judge for many years,³⁶ while the latter, curiously enough, had been elected to the House of Commons in 1808, though he, too, had previously held office.³⁷

(Raleigh, 1836), p. 281. See also speech of H. M. Brackenridge (Philadelphia, 1828) p. 91.

See also speech of Col. J. W. D. Worthington, published with "Speeches on the Jew Bill," etc., by H. M. Brackenridge, Philadelphia, 1829, p. 107.

In his address Col. Worthington says: "A person was some year or so past elected in the North Carolina legislature. She has a strict test, his seat was attempted to be vacated, it was determined that the State test was repugnant to the Constitution of the United States, and *he retained* his seat. He was a Jew."

³⁶ John Louis Taylor represented Fayetteville in the House of Commons in 1792, was elevated to the Bench in 1798, and later (about 1808) became Chief Justice of the Supreme Court of North Carolina, remaining Chief Justice until his death in 1829. He had married the sister of William Gaston. See John H. Wheeler, "Historical Sketches of North Carolina," Philadelphia, 1851, Vol. II, pp. 114, 129. Also Appleton's Cyc. of Amer. Biog., Vol. VI.

³⁷ William Gaston (1778-1844) graduated from Princeton with honors, elected to the State Senate in 1799, and in 1808 to the House of Delegates, over which he was chosen to preside. He represented the State in Congress, 1813-15, and was Judge of the Supreme Court from 1834 until his death. One of the counties of North Carolina is named in his honor. An interesting sketch of him is given in Wheeler, "Historical Sketches of N. C.," Philadelphia, 1851, Vol. II, p. 114. See also William H. Battle, "Life and Character of William Gaston," Chapel Hill, 1844. Also Robert Strange, "Eulogy of William Gaston," Fayetteville, 1844. Also Appleton's Cyc. of Amer. Biog., Vol. II.

It will be noticed at once, that the very point raised against Henry might have been raised with equal propriety against Gaston, in fact against any Roman Catholic or Quaker. It was but natural, therefore, that the prominent Roman Catholics at once rallied to Henry's defense and warmly espoused his cause. On the other hand it is but fair to state that both Taylor and Gaston were broadminded men, and, entirely independent of selfish motives, both would have fought the cause of the Jewish member, on the broader issue of complete religious liberty.

While investigating this interesting episode, I found a copy of an address made by Jacob Henry in his defense before the House.³⁸ This speech is a splendid example of composition and for intrinsic merit was subsequently republished in a work known as the "American Orator." The address itself is too long to be given in full, but I will take the liberty of quoting some of its more striking passages.

After discussing the legal aspect of the subject he continues:

"It is difficult to conceive how such a provision crept into the Constitution, unless it is from the difficulty the human mind feels in suddenly emancipating itself from fetters by which it has long been enchained:

"If a man should hold religious principles incompatible with the freedom and safety of the State, I do not hesitate to pronounce that he should be excluded from the public councils of the same; and I trust if I know myself, no one would be more ready to aid and assist than myself. But I should really be at a loss to specify any known religious principles which are thus dangerous. It is surely a question between a man and his maker, and requires more than human attributes to pronounce which of the numerous sects prevailing in

³⁸ Historical Sketches of North Carolina from 1584 to 1851, compiled from original Records, Documents, etc., by John H. Wheeler, late Treasurer of the State, Philadelphia, 1851, Vol. II, pp. 74-76.

the world is most acceptable to the Deity. If a man fulfils the duties of that religion, which his education or his conscience has pointed to him as the true one, no person, I hold, in this, our land of liberty, has a right to arraign him at the bar of any inquisition; and the day, I trust, has long passed, when principles merely speculative were propagated by force; when the sincere and pious were made victims, and the light-minded bribed into hypocrites. Governments only concern the actions and conduct of man, and not his speculative notions. . . . Shall this free country set an example of persecution, which even the returning reason of enslaved Europe would not submit to? Will you bind the conscience in chains? Will you drive from your shores and from the shelter of your Constitution, all who do not lay their oblations on the same altar, observe the same ritual, and subscribe to the same dogmas? If so, which among the various sects into which we are divided, shall be the favored one? . . .

“When Charles V, Emperor of Germany, tired of the cares of government, resigned his crown to his son, he retired to a monastery, where he amused the evening of his life in regulating the movements of watches, endeavoring to make a number to keep the same time; but, not being able to make any two to go exactly alike, it led him to reflect upon the folly and crimes he had committed, in attempting the impossibility of making men think alike?

“Nothing is more easily demonstrated than that the conduct alone is the subject of human laws, and that man ought to suffer civil disqualifications for what he does, and not for what he thinks. The religion I profess inculcates every duty which man owes to his fellow men; it enjoins upon its votaries the practice of every virtue, and the detestation of every vice, it teaches them to hope for the favor of heaven exactly in proportion as their lives have been directed by just, honorable, and beneficent maxims. This, then, gentlemen, is my creed; it was impressed upon my infant mind; it has been the director of

my youth, the monitor of my manhood, and will, I trust, be the consolation of my old age. At any rate, Mr. Speaker, I am sure that you cannot see anything in this religion to deprive me of my seat in this House. So far as relates to my life and conduct, the examination of these I submit with cheerfulness to your candid and liberal construction. What may be the religion of him who made this objection against me, or whether he has any religion or not, I am unable to say. I have never considered it my duty to pry into the belief of other members of this House. If their actions are upright and conduct just, the rest is for their own consideration, not for mine. I do not seek to make converts to my faith, whatever it may be esteemed in the eyes of my officious friend, nor do I exclude anyone from my esteem or friendship because he and I differ in that respect. The same charity, therefore, it is not unreasonable to expect, will be extended to myself, because in all things that relate to the State and to the duties of civil life, I am bound by the same obligations with my fellow citizens, nor does any man subscribe more sincerely than myself to the maxim, 'Whatever ye would that men should do unto you, do ye so even unto them, for such is the law and the prophets.' "

Henry's speech produced a profound impression even outside of North Carolina, and the victory achieved was a powerful argument some years later when the struggle for religious liberty was going on in Maryland. In speaking on the Maryland Jew Bill, in 1818, the Hon. H. M. Brackenridge alluded to the incident as follows: "In the State of North Carolina there is a memorable instance on record of an attempt to expel Mr. Henry, a Jew, from the legislative body, of which he had been elected a member. The speech delivered on that occasion I hold in my hand. It is published in a collection called the 'American Orator,' a book given to your children at school and containing those republican truths you wish to see earliest implanted in their minds. Mr. Henry prevailed, and

it is a part of our education as Americans to love and cherish the sentiments uttered by him on that occasion.”³⁹

Later on, during the Maryland struggle in 1824, Col. J. W. D. Worthington, in the course of his speech, also recalled Henry’s triumph in glowing terms.⁴⁰

Despite all this, however, the victory was one in form only, not in substance. As a matter of fact, the test was more firmly implanted than ever. The House of Commons in permitting Henry to retain his seat, resorted to a far-fetched construction of the 32d Article, which emphasized rather than weakened its prohibition. The decision was based on the fact that the Constitution prohibited non-Protestants from holding office *in any civil department* of the State. This was interpreted not to exclude such persons from serving in the legislature. The legislative office, it was said, was *above all civil offices*.⁴¹ The view was more pointedly defined by saying, that Catholics and Jews could make the laws but could neither execute nor interpret them.⁴²

As years went by, several efforts were made to abolish the test altogether. In 1823 a Convention was held at Raleigh, called the “Western Convention.” A motion was made “to expunge the 32nd Article as hostile to the principles of religious freedom and unworthy of the liberty of the age.” A general concurrence in this sentiment was expressed, but the motion was withdrawn at the suggestion of Mr. Yancy,

³⁹ Speeches on the Jew Bill, etc., by H. M. Brackenridge, Philadelphia, 1829, p. 91.

⁴⁰ Speech of Col. J. W. D. Worthington, published with “Speeches on the Jew Bill,” etc., by H. M. Brackenridge, Philadelphia, 1829, p. 107.

⁴¹ This, according to Gaston, was the ground on which Henry retained his seat. See Speech of Hon. William Gaston, Baltimore, 1835, p. 23. Also Proceedings and Debates of the Convention of North Carolina (1835), Raleigh, 1836, p. 281.

⁴² *Ibid.*, p. 282.

the president, on the ground that it was foreign to the objects of the Convention.⁴³

Catholics were repeatedly elected to office, and several ingenious constructions were put upon the Constitutional prohibition, so as to enable them to serve. The fact that they did not deny the divine inspiration of both the Old and the New Testament, gave them, of course, a decided advantage over Jews and others. Catholics, furthermore, took the position that as the Constitution did not define what was meant by the Protestant religion, *their* belief could not be said to be a *denial* of it. "The Catholic believes in the Divinity of the Protestant faith and he also believes in something else besides," argued Judge Gaston, when the question was raised.⁴⁴ Afterward, however, Gaston was elected Justice of the Supreme Court; a doubt at once arose, even in his own mind, whether he could accept the office. The candidate then resorted to another and even more ingenious interpretation of the Constitution, which was subsequently followed in other cases as well. Section 32 prohibits only such persons from holding office *as shall deny* the truth of the Protestant religion or the divinity of both the Old and the New Testament. This, Gaston argued, did not prevent either Jews or Catholics from holding office, for the word "*deny*" implies an *overt act*. If a person tells me something, I may doubt it, but I need not deny. I may actually disbelieve the thing, and yet for reasons of courtesy refrain from denying it. While, therefore, a Catholic may actually disbelieve in Protestantism, for reason of courtesy, he should refrain from denying its truth. All that was contemplated by the Constitution, Gaston argued, was *that no person shall do that overt act of denying* the truth of

⁴³ See Gaston's Address in the Convention of 1835. *Ibid.*, p. 275.

⁴⁴ This argument Gaston used in his own defense, pointing out that Catholics could therefore conscientiously conform to the test. See Gaston's Address in the Convention of 1835, Proceedings, etc., p. 268.

the Protestant faith, that would discredit it with the community. To use his own words, "The Constitution does not prescribe the faith which entitles to or excludes from civil office, but demands from all those who hold office, that decent respect of the prevalent religion of the country which forbids them to impugn it, to declare it false, to arraign it as an imposition upon the credulity of the people."⁴⁵

As already stated, this ingenious construction was generally adopted. Despite its apparent acceptance, however, Roman Catholics were doubtless far from convinced by its logic, and entered upon a systematic campaign for the abolition of the test.

In 1833, the General Assembly undertook to prepare a substitute for the existing Constitution. In the report accompanying the bill, the committee recommended that the 32d Article of the Constitution should be abolished at least in part, if not altogether. "Its spirit is in conflict with religious freedom; it has no practical use and it may be considered a mere badge of ancient prejudice, which, however excusable in those who first engrafted it upon our Constitution, is unworthy the present age of enlightened liberality."⁴⁶

The substitute wholly expunged the test. A motion made

⁴⁵ Speech of Hon. William Gaston, Baltimore, 1835, p. 8. See also Gaston's Argument before the Convention of 1835, in which the whole subject is elaborately reviewed. *Proceedings and Debates, etc.*, 1835, p. 267. Gaston made his argument in favor of this construction, even more forcible by pointing out that, as the Bill of Rights gives religious liberty, therefore any provision limiting religious freedom, must be *strictly* construed. *Ibid.*, pp. 266-7.

If Gaston's argument be accepted as correct construction, it will be noticed at once that Jews were on an equal footing with Roman Catholics, and that both could hold office notwithstanding Section 32.

⁴⁶ *Proceedings and Debates of the Convention of North Carolina* (1835), Raleigh, 1836, p. 277.

in the Senate, to insert it, was rejected by a vote of 23 to 38. A modification was then proposed omitting all those parts "which related to a denial of the divine authority of the New or Old Testament and of the truth of the Protestant religion," and this was adopted by a vote of 50 to 9.⁴⁷

It was then submitted to the people to call a Convention to amend the Constitution. The result was the Convention of 1835.⁴⁸

As already stated, the Catholics seem to have canvassed several of the counties on this one issue. The Convention met at Raleigh, and then despite the repeated statement made for years, that the objectionable clause was a dead letter, it at once became the very storm center of discussion. Seven days of the session were spent in debates concerning it, while about one-third of the entire Convention Journal is devoted to this subject alone.⁴⁹ Although there were but few Jews in the State it is most remarkable that their claims were discussed no less earnestly than those of Roman Catholics.

Two of the most prominent members of the Convention who had been absent on other occasions are recorded as having left their sick beds, expressly to vote on this one question. To the honor of both these men, be it said they were uncompromisingly in favor of the broadest religious liberty. The one was Mr. Carson,⁵⁰ the other was John Branch, of Halifax, once Governor of the State, United States Senator, and but

⁴⁷ *Ibid.*, p. 278.

⁴⁸ The Convention met at Raleigh, June 4, 1835, for the purpose of amending the Constitution of 1776. Also *ibid.*, pp. 278-9.

⁴⁹ *Ibid.* The discussion of the objectionable clause began June 26, 1835, and lasted, with slight interruption, until July 9, 1835. Nathaniel Macon was President of the Convention.

⁵⁰ Mr. Carson had represented North Carolina in Congress, 1825-33, and in the Convention he represented Burke County. See *Proceedings and Debates of the Convention, 1835*, p. 240.

a few years before Secretary of the Navy in Jackson's Cabinet.⁵¹

The debate was opened with a brilliant address by Weldon N. Edwards⁵² in favor of the broadest possible view. "If we exclude one sect to-day," said he, "what sect will the reckless spirit of proscription next assail. . . . A system based on the principle that the consciences of men and their faith in matters of religion shall become an affair of government, cannot long be tolerated without a total enslavement of the citizen. . . ."⁵³

The Jews were practically the only sect not represented in the Convention. Roman Catholics,⁵⁴ Moravians,⁵⁵ and

⁵¹ John Branch (1782-1863). Later Mr. Branch was also Governor of the Territory of Florida. See Appleton's Cyc. of Amer. Biog., Vol. I. Also Proceedings and Debates, etc., 1835, p. 213.

⁵² See Appleton's Cyc. of Amer. Biog., II. Edwards represented North Carolina in Congress, 1816-27, later became President of the State Senate, and in 1861 was President of the Convention that passed the ordinance of secession.

⁵³ Proceedings and Debates of the Convention, etc. (1835), Raleigh, 1836, p. 216. "By retaining this article," he continued, "we proclaim that a particular faith shall be the price of office,—that all who do not conform to it shall be punished by an exclusion from the honors, emoluments, and distinctions which the humblest should be permitted to aspire to. . . . The only true way to keep religion and politics apart, is to confer no peculiar privileges on any one sect, but to extend equal protection to all." *Ibid.*, pp. 216-217.

⁵⁴ Gaston was the leading Roman Catholic in the Convention. His addresses and debates were dignified, broad, and manly. Another prominent speaker in favor of Roman Catholics was James W. Bryan, an Episcopalian. He also spoke in favor of the abolition of the entire article, and paid a glowing tribute to the memory of Jefferson for framing the Act for Religious Freedom in Virginia. *Ibid.*, pp. 219-236.

⁵⁵ Mr. Shober represented the Moravians. *Ibid.*, pp. 249-51.

Quakers, all had their spokesmen.⁵⁶ Several addresses were made full of the most bitter invective against Catholics.

The leaders of the Anti-Liberal party were Jesse Cooper⁵⁷ and James S. Smith, the latter of whom affected liberality by saying that no Catholic had ever been disturbed by the Constitutional prohibition. "It should be retained," he argued, "as the time might come when it would be needed. It should be kept as Sleeping Thunder."⁵⁸

Nathaniel Macon, the friend of Jefferson and Madison, then 78 years of age, was also present on that occasion and made a powerful plea for abolishing the entire article.⁵⁹

⁵⁶ James Wellborn, of Wilkes, spoke in favor of an amendment which would "exclude only atheists and infidels from having anything to do with the government." *Ibid.*, p. 242.

⁵⁷ Cooper's address is a bitter attack on Roman Catholics. *Ibid.*, p. 242.

⁵⁸ *Ibid.*, pp. 244, 310. A similar sentiment was expressed by Mr. Joiner. Smith appears to have held the narrowest views of all. Besides his firm opposition to Roman Catholics, his objection extended to the other sects as well. In his argument at the session on June 30, 1835, he stated that he was "not willing by expunging this article to let in Turks, Hindoos, and Jews. They might call him a bigot as much as they pleased, but he would not consent to this." . . . "Must we swear the Turk on the Koran, must we separate the Holy Scriptures that we may swear the Jew on the Old Testament." (*Ibid.*, p. 308.)

⁵⁹ Proceedings and Debates of the Convention, etc. (1835), Raleigh, 1836, pp. 246-8. Nathaniel Macon (1757-1837) may well be called the "Grand Old Man" of North Carolina. Leaving Princeton at the outbreak of the American Revolution, he served as a soldier until 1782, when Gen. Greene urged him to accept the honor of State Senator, a position he held until 1785. He represented North Carolina in Congress from 1791 to 1815, when he became U. S. Senator, holding that dignity until 1828. He was Speaker of the House 1801-6. Although frequently offered high executive office, he refused whatever was not the gift of the people or their immediate representatives in the legislature. He was President, *pro. tem.*, of the Senate, 1825-7. John Randolph

"If a Hindoo were to come among us," said he, "and was fully qualified to discharge the duties of any office to which he might aspire, his religious belief should not constitute an objection why he should be debarred. Who made man a judge, that he should presume to interfere with the sacred rights of conscience?"⁶⁰

Another powerful appeal was made by Kenneth Rayner⁶¹ and lastly by Judge Gaston, who referred to the Henry incident.⁶²

"The prohibitions in this article can exclude no one from seats in the General Assembly. . . . A seat in the Legislature is *above* offices or places of trust in the Civil Department and is not comprehended impliedly within these terms. If there had been any good reason to doubt this construction, such a doubt would have been removed by the adjudication of the Senate of the United States upon the impeachment of William Blount, and the decision of our House of Commons in the year 1808 in the case of Mr. Jacob Henry, a Jew, and a representative in that body from the County of Carteret."

said of him, "He is the wisest, the purest, and the best man that I ever knew." See Appleton's Cyc. of Amer. Biog., Vol. IV

In the debate for the abolition of the test he took the broadest possible ground, namely, "that man is responsible to his Creator alone for his religious faith, and that no human power has any right to prescribe any particular opinions as a test of fitness for office."

⁶⁰ *Ibid.*, p. 246.

⁶¹ Proceedings and Debates of the Convention (1835), Raleigh, 1836, pp. 254-264. Kenneth Rayner subsequently represented North Carolina in Congress, 1839-45. "Retain that article," said he, "and the Catholic and the Jew will be placed under the ban of proscription, no matter how great may be his merit; although he may love his country with a patriotism as pure as the first love of woman, although he may pour out his blood like water in her defense, yet for daring to worship God according to the dictates of his own conscience, you cut him off from all hope of political preferment and from all stimulus to a laudable ambition" (p. 263).

⁶² *Ibid.*, p. 281.

ERRATA

Pp. 58 and 59. The fine print in the text is part of note 62, but was inserted above by printer's error.

Pg. 63. (Last line) for "said" read "same."

Gaston's address is probably the most important address delivered in the Convention and well deserves more ample notice. The arguments used by him, have, however, been hereinbefore stated. See also *ibid.*, pp. 265-304. While Gaston contended on the one hand that the section did not disqualify Roman Catholics and others, yet he insisted on having it wholly expunged.

"The question is, ought there be any religious test in the Constitution? Shall any man be debarred from office merely because of his *opinions* on matters of religion? To me, it seems, the answer must be in the negative." (*Ibid.*, p. 283.)

In this address also occurs an eloquent tribute to Roger Williams. He also quotes from Swift, "We have just religion enough to hate, and not enough to love each other." The address was so highly esteemed that it was reprinted in pamphlet form. See "Speech of Hon. William Gaston, delivered in the Recent State Convention of North Carolina assembled for the purpose of revising the Constitution," Baltimore, 1835.

Similar liberal views were also expressed by other speakers, Mr. Harrington among others. *Ibid.*, p. 306.

During the debate a compromise measure had been offered which would enable Catholics to hold office, but would still exclude the other sects. The amendment was adopted and consisted in simply striking out the word "Protestant" and inserting the word "Christian" instead.⁶³

Even after this concession, the noble champions of religious liberty did not remain silent. Mr. Edwards at once moved to amend the committee's report by inserting the following: "That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, all religious tests as qualifications for office are incompatible with the principles of free government." This amendment was lost by a vote of 87 to 36. The most prominent men in the Convention, however, Gaston, Macon, Branch, and others, voting in its favor.⁶⁴

⁶³ June 30, 1835. Proceedings and Debates, etc., p. 309. This was adopted by the body sitting as a Committee of the Whole.

⁶⁴ Session, July 1, 1835. *Ibid.*, p. 310.

Thereafter another amendment was offered by Mr. Jacocks excluding only atheists from office.⁶⁵

Following this, Governor Branch made an impassioned plea on behalf of the Jews. He boldly stated that he would refuse to vote for the amendment as reported, as it did not remove the stain from the Constitution. To use his own words, "Striking out the word 'Protestant' and inserting the word 'Christian' would not cure the evil Why are the Jews to be excluded from office? They were the favorite people of the Almighty. Our Saviour and His disciples were Jews, and are there not men among the Jews as talented, as virtuous, as well qualified to fill any office in our Government as any other citizen in our Community. A Jew may be appointed to any office under the General Government. He may be raised to the Presidency of the United States, and why shall we refuse to admit him to any office under our government?"⁶⁶ Judge Daniel thereupon offered a liberal resolution,⁶⁷ but this was lost, as was also another offered by Mr. Holmes.⁶⁸

⁶⁵ This amendment was as follows: "No person who shall deny the being of a God shall be capable of holding any office or place of trust or profit in the Civil Department within this State, provided that the liberty of conscience hereby secured shall not be construed to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State."

It was lost by a vote of 82 to 42. *Ibid.*, p. 310.

⁶⁶ Proceedings and Debates of the Convention, etc. (1835), Raleigh, 1836, p. 311.

⁶⁷ "Resolved, that it is expedient to remove the disqualifications for office contained in the 32d Article, from all who do not deny the Being of a God and an accountability to Him for the deeds done in the body." This was lost, 80 to 46. *Ibid.*, pp. 311-12.

Judge Daniel at this time was Attorney-General, later he represented the State in Congress for many years.

⁶⁸ Mr. Holmes' substitute was as follows: "That no person who shall deny the Being of a God shall be capable of holding any office or place of trust or profit in the Civil Department

The original amendment to substitute the word "Christian" for "Protestant" then came to a vote. The compromise was championed by Mr. Carson, who himself had voted for a total abolition of the test.

"We were in favor," said he, "of a complete religious toleration. We have been defeated . . . If we cannot make room for the Jew, if he be thought worthy for office, let us not refuse the privilege for Christians of every denomination."⁶⁹ The compromise was carried, but some of the champions for absolute religious liberty, *deliberately voted against it* on the ground that they would have nothing less than a full and complete abolition of the test. Among these was Governor Branch.⁷⁰

Even then the struggle was not closed; on July 9, 1835, the amendment came up for a second reading. There was, of course, no chance to change the vote, but nevertheless a brilliant appeal was made by Mr. Wilson.⁷¹ "Why," said he,

within this State. The exercise and enjoyment of every religious profession and worship without discrimination shall forever be free to all persons in this State, providing the right hereby declared and established shall not be so construed as to excuse or justify practices incompatible with the freedom and safety of the State and, provided further, that no preference shall ever be given by law to any religious sect or mode of worship." Lost, 78 to 46. *Ibid.*, p. 311.

In this connection it is interesting to note that Mr. Toomer, who opposed the amendment, declared that "the Article is a mere declaration of principles and not a proscription of individuals from the enjoyment of any privilege. Infidels and Jews have been members of each branch of the General Assembly." *Ibid.*, p. 314.

⁶⁹ *Ibid.*, p. 329.

⁷⁰ The vote was 74 to 51. *Ibid.*, p. 331.

⁷¹ Mr. Wilson spoke for the Quakers. It is interesting to note that in his address he laid stress on the fact that no hostility existed against the Jews. He defied his opponents to say "that there was the least hostility in the public mind against Jews or

“should Catholics be admitted to a participation in the offices of trust and profit in this State, while Jews, Quakers, and Deists are excluded. Is there anyone here prepared to say to his constituents that the Catholics have been found more trustworthy than the peaceful Quakers or the persecuted Jews?”⁷²

He also pointed out that the Catholics would be no better off by substituting the word “Christian” for “Protestant,” calling attention to the fact that the Presbyterian Convention at Pittsburg had then but recently adopted a resolution “that Catholicism cannot be recognized as a Christian Church.”⁷³ Pleading for the Jew, he continued, “Who is prepared to say that there is not at this very moment among us, some son of Abraham who, fired by genius and prompted by the most laudable ambition, may, in the course of the next thirty years, by dint of his extraordinary talents, cultivated and nurtured by the most studious and unremitted industry, occupy the topmost place in the affections of the State. Is it unlikely?”⁷⁴

Mr. Wilson then offered the following amendment: “Resolved, That all freemen, having the qualifications of age and property prescribed by the existing Constitution, and who, previously to entering upon official duties, shall take the oath of allegiance to this State, and the oaths to support the Constitution of this State and the Constitution of the United

Quakers. The only class against whom there was any excitement in the public mind was the Roman Catholics, and this was known to all.” *Ibid.*, p. 387.

⁷²*Ibid.*, p. 388. “There are but few Catholics in this State, still fewer Jews, while the Quakers are numerous.”

⁷³*Ibid.*, p. 390.

General Louis Dicken Wilson was one of the most beloved public men in North Carolina and had been a member of the legislature for many years. See Wheeler’s Sketches, etc., Vol. II, p. 144.

⁷⁴Proceedings and Debates of the Convention of 1835, Raleigh, 1836, p. 394.

States, shall be capable of holding any office of trust or profit within the Civil Department of this State.” This amendment was lost and the original compromise was adopted.⁷⁵ The result, therefore, was, that Roman Catholics alone were emancipated in 1835.⁷⁶ The legal status of Jews, Quakers, Deists, and others remained entirely unchanged.

This result was severely criticized by the press at the time, and particularly by the “Newbern Spectator,” whose comment was as follows: “The illiberal and disgraceful distinction which this article makes between Protestants and other sects of worshippers has long been condemned by nearly every intelligent man in the State, and it was hoped, indeed we believe, it was the intention of the people that this distinction should be done away by the Convention; but a majority of the members thought it better to retain the spirit of the odious restriction on liberty of conscience, notwithstanding the brilliant and convincing arguments used by Judge Gaston and other distinguished gentlemen in favor of a more liberal course.”⁷⁷

Matters now remained in this condition for many years until the agitation in favor of removing Jewish disability received a powerful stimulus from a Jew, outside of Carolina, a man whose services to the cause of American Judaism have never been fully appreciated, a zealous defender of his faith and at the said time a thorough American. I refer to

⁷⁵ *Ibid*, p. 397.

⁷⁶ It seems that this result aroused considerable anti-Catholic feeling throughout the State and that Gaston’s Speech was published in pamphlet form partly to offset this outbreak. In fact the preface to the pamphlet states “The following speech derives extraordinary claims to attention from the attempts which have been frequent of late in various quarters, to rouse a spirit of religious persecution against a large and most estimable portion of our countrymen.”

⁷⁷ See Preface to Gaston’s Address. (Baltimore, 1835.)

Isaac Leaser, of Philadelphia.⁷⁸ In his periodical, "The Occident," he never ceased to call attention to the stain on American liberty existing in North Carolina. He seems also to have been in correspondence with Jews there, constantly urging them to take up the struggle.⁷⁹

Finally, in 1858, the small Jewish Congregation at Wilmington, North Carolina, circulated a petition for the removal of the existing disability. This was presented to the legislature.⁸⁰ The daily press sympathized with the movement. The "Wilmington Journal," on September 20, 1858, wrote as follows: "We do not care for commencing any agitation or starting any new issue. We merely state our opinion that the invidious distinction in our State Constitution against the members of this religious denomination is not in accordance with the liberal spirit of the age in which we live. The number of Israelites in North Carolina is very small, and does not to our knowledge and belief, contain a single man who is an applicant for office of any kind, and therefore the incapacity for holding it, is more invidious because wholly gratuitous."⁸¹

As a result of the agitation a bill was introduced in the legislature, House Bill No. 83, which provided for the "repeal of so much of the section as prohibited persons of the Jewish or Israelitish faith from holding offices of profit or trust in the State." This bill was referred to the Committee on Judiciary whose chairman subsequently presented the following report: "The Committee are of opinion that the principle on which the bill is founded, is correct. No person should be proscribed or placed under any civil disability on

⁷⁸ Isaac Leaser (1806-1868). For sketch of his career see *Jewish Encyclopedia*, Vol. VII.

⁷⁹ See "The Occident," Vol. 16, pp. 408, 503, 531; Vol. 24, pp. 281, 382, etc.

⁸⁰ See also *ibid.*, Vol. 16, p. 531.

⁸¹ See also *ibid.*, Vol. 16, pp. 408-9.

account of religious faith.” The report then proceeds to laud religious liberty to the skies, calls the objectionable clause in the Constitution “a relic of bigotry and intolerance unfit to be associated in our fundamental law with the enlightened principles of representative government,” but finally concludes, “Such are the views of the Committee; nevertheless the Committee have instructed me to report the bill to the House with the recommendation that it does not pass, because in the opinion of the committee, it is highly inexpedient to alter or amend the Constitution by legislative enactment in any particular whatsoever.”⁸²

The result aroused some sharp criticism, the “Wilmington Journal” claiming boldly that the matter was not one which concerned the few persons of the Jewish faith, but the reputation of the State of North Carolina.⁸³

Isaac Leeser, however, continued the agitation. In December, 1858, a long dignified letter appeared from his pen in the Philadelphia “Evening Journal,” in which he called the attention of the American public generally to the disqualifications then existing both in North Carolina and in New Hampshire,⁸⁴ but the slavery issue and the events preceding the great Civil War soon crowded out all other considerations.

Another effort was made when the Constitutional Convention met in 1861; and Leeser’s “Occident” and other periodicals state that the desired result was actually accom-

⁸² The Chairman of the Committee was John Kerr, who had represented the State in Congress, and later became Judge of the Superior Court.

The report is also given in “The Occident,” Vol. 16, p. 503. The bill itself was finally tabled.

⁸³ See also “Occident,” Vol. 16, p. 503, etc.

⁸⁴ See *ibid.*, p. 531. New Hampshire did not abolish the disqualification until 1876.

plished.⁸⁵ Investigation proves, however, that this was by no means the case. The Journal of the Convention shows that that body met at Raleigh May 20, 1861, voted for secession, joined the Confederacy, and then proceeded to a revision of the State Constitution. The question of the test was brought up on June 11, 1861, and Mr. Ruffin's amendment was carried, making the objectionable clause read as follows: "That no person who shall deny the Being of God or the Divine Authority of both the Old and the New Testaments, or who shall hold religious opinions incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the Civil Department within this State."

Mr. Biggs then moved the following amendment, striking out all after the ordaining clause and inserting "No religious test shall ever be required as a qualification to any office or public trust in this State." This amendment was lost by a vote of 33 to 69.⁸⁶

After the war, and in connection with the reconstruction, another Convention met at Raleigh in 1865. Though it appears from contemporary newspapers that Jewish emancipa-

⁸⁵ *Ibid.*, Vol. 24, p. 281. Speaking about the proposed Constitution of 1865, Leeser wrote: "We at once dreaded that the concessions made to Israelites in the Convention which voted the State out of the Union, would be stricken out from the new fundamental law."

⁸⁶ Journal of the Convention of the People of North Carolina, held on the 20th day of May, A. D. 1861, Raleigh, 1862, pp. 90-2.

Thomas Ruffin (1787-1870). Speaker of the Legislature, 1816, Chief Justice of North Carolina, 1829-52. See Appleton's Cyc. of Amer. Biog.

Asa Biggs represented North Carolina both in Congress (1845) and in the U. S. Senate (1854-8). In 1858 he became Judge of the U. S. District Court of North Carolina. See Appleton's Cyc. of Amer. Biog.

tion was agitated, the Convention Journal shows no trace of it.⁸⁷

American Jews generally now became interested however. In September, 1866, the "Occident" published the following: "When we heard last year that a Convention was about to meet in North Carolina, for the purpose of revising the State Constitution, we urged the few of our persuasion we met from time to time to watch over the doings of the Convention The Executive Committee of the Board of Delegates on learning of the passage of the clause referred to, at once issued a notice or appeal to the people of North Carolina, but as the Constitution has been adopted by the Convention, of course the appeal came too late and is in fact perfectly useless. If the people have ratified the doings of their servants, the only remedy is by agitation, to excite the popular attention to the injustice done us, and thus obtain perchance through future legislation, a repeal of the obnoxious clause. We have already spoken to resident Israelites on the subject and we are confident that it will not be allowed to lie dormant. Not that we care for Jews holding office, but for the principle and this we would do if there were even no one fit to serve the State."⁸⁸

The "Augusta Sentinel" sympathized with the movement,⁸⁹ and from a subsequent number of the "Occident" it appears that the proposed Constitution was rejected by the people,

⁸⁷ Journal of the Convention of the State of North Carolina, 1865-1866, Raleigh, 1866, p. 51.

⁸⁸ See also "The Occident," Vol. 24, p. 281.

⁸⁹ The "Augusta (Georgia) Sentinel" used the following language in this connection: "North Carolina occupies the unenviable position of being the only State in the Union which prescribes any religious test as a qualification for office." The article then makes an appeal for toleration and alludes to the patriotism of the Jews of the Confederacy during the Civil War. See also "Occident," Vol. 24, p. 281, etc.

though on other grounds."⁹⁰ Leaser once again earnestly urged the matter, but in vain, and it was not until the Constitutional Convention of 1868 that Jewish emancipation was accomplished. Strangely enough there appears to have been no debate on the latter occasion. When the report of the Committee on Suffrage and Eligibility to office was called for, the clause was thus worded:⁹¹ "The following classes of persons shall be disqualified for office:

"1. All persons who shall deny the Being of Almighty God.

"2. All persons who shall have been convicted of treason, etc."

There was a strong minority report it is true, but it related mainly to negro disqualification. The elimination of the test was apparently taken as a matter of course.⁹² No change has been made since 1868, so that, at present, the only persons debarred from holding office in North Carolina are atheists and infidels.

APPENDIX.

SPEECH OF MR. JACOB HENRY.

I certainly, Mr. Speaker, know not the design of the Declaration of Rights made by the people of this State in the year 1776, if it was not to consecrate certain great and fundamental rights and principles, which even the Constitution cannot impair; for the 44th section of the latter instrument declares that the Declaration of Rights ought never to be violated, on any pretense whatever; if there is any apparent difference between the two instruments, they ought, if possible, to be reconciled; but if there is a final repugnance between them, the Declaration of Rights must be considered paramount; for I believe it is to the Consti-

⁹⁰ *Ibid.*, p. 382.

⁹¹ Journal of the Constitutional Convention of the State of North Carolina, 1868, Raleigh, 1868, p. 233. (Report of the Committee on Suffrage and Eligibility to Office.) Constitution, Article 6. Section 5. See also pp. 235-8.

⁹² *Ibid.*

tution, as the Constitution is to law; it controls and directs it absolutely and conclusively. If, then, a belief in the Protestant religion is required by the Constitution to qualify a man for a seat in this house, and such qualification is dispensed with by the Declaration of Rights, the provision of the Constitution must be altogether inoperative; as the language of the Bill of Rights is, "that all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences." It is undoubtedly a natural right, and when it is declared to be an inalienable one by the people in their sovereign and original capacity, any attempt to alienate either by the Constitution or by law, must be vain and fruitless.

It is difficult to conceive how such a provision crept into the Constitution, unless it is from the difficulty the human mind feels in suddenly emancipating itself from fetters by which it has long been enchained; and how adverse it is to the feelings and manners of the people of the present day every gentleman may satisfy himself by glancing at the religious belief of the persons who fill the various offices in this State: there are Presbyterians, Lutherans, Calvinists, Mennonists, Baptists, Trinitarians, and Unitarians. But, as far as my observation extends, there are fewer Protestants, in the strict sense of the word, used by the Constitution, than of any other persuasion; for I suppose that they meant by it, the Protestant religion as established by the law in England. For other persuasions we see houses of worship in almost every part of the State, but very few of the Protestant; so few, that indeed I fear that the people of this State would for some time remain unrepresented in this House, if that clause of the Constitution is supposed to be in force. So far from believing in the Thirty-nine Articles, I will venture to assert that a majority of the people never have read them.

If a man should hold religious principles incompatible with the freedom and safety of the State, I do not hesitate to pronounce that he should be excluded from the public councils of the same; and I trust if I know myself, no one would be more ready to aid and assist than myself. But I should really be at a loss to specify any known religious principles which are thus dangerous. It is surely a question between a man and his maker, and requires more than human attributes to pronounce which of the numerous sects prevailing in the world is most acceptable to the Deity. If a man fulfils the duties of that religion, which his education or his conscience has pointed to him as the true one,

no person, I hold, in this our land of liberty, has a right to arraign him at the bar of any inquisition; and the day, I trust, has long passed, when principles merely speculative were propagated by force; when the sincere and pious were made victims, and the light-minded bribed into hypocrites.

The purest homage man could render to the Almighty was in the sacrifice of his passions and the performance of his duties. That the ruler of the universe would receive with equal benignity the various offerings of man's adoration, if they proceeded from the heart. Governments only concern the actions and conduct of man, and not his speculative notions. Who among us feels himself so exalted above his fellows as to have a right to dictate to them any mode of belief? Shall this free country set an example of persecution, which even the returning reason of enslaved Europe would not submit to? Will you bind the conscience in chains, and fasten convictions upon the mind in spite of the conclusions of reason and of those ties and habitudes which are blended with every pulsation of the heart? Are you prepared to plunge at once from the sublime heights of moral legislation into the dark and gloomy caverns of superstitious ignorance? Will you drive from your shores and from the shelter of your constitution, all who do not lay their oblations on the same altar, observe the same ritual, and subscribe to the same dogmas? If so, which, among the various sects into which we are divided, shall be the favored one?

I should insult the understanding of this House, to suppose it possible that they could ever assent to such absurdities; for all know that persecution in all its shapes and modifications, is contrary to the genius of our government and the spirit of our laws, and that it can never produce any other effect than to render men hypocrites or martyrs.

When Charles V, Emperor of Germany, tired of the cares of government, resigned his crown to his son, he retired to a monastery, where he amused the evening of his life in regulating the movements of watches, endeavoring to make a number to keep the same time; but, not being able to make any two to go exactly alike, it led him to reflect upon the folly and crimes he had committed, in attempting the impossibility of making men think alike!

Nothing is more easily demonstrated than that the conduct alone is the subject of human laws, and that man ought to suffer civil disqualification for what he does, and not for what he thinks.

The mind can conceive laws only from Him, of whose Divine essence it is a portion; He alone can punish disobedience; for who else can know its movements, or estimate their merits? The religion I profess, inculcates every duty which man owes to his fellow men; it enjoins upon its votaries the practice of every virtue, and the detestation of every vice; it teaches them to hope for the favor of heaven exactly in proportion as their lives have been directed by just, honorable, and beneficent maxims. This, then, gentlemen, is my creed; it was impressed upon my infant mind, it has been the director of my youth, the monitor of my manhood, and will, I trust, be the consolation of my old age. At any rate, Mr. Speaker, I am sure that you cannot see anything in this religion, to deprive me of my seat in this house. So far as relates to my life and conduct, the examination of these I submit with cheerfulness to your candid and liberal construction. What may be the religion of him who made this objection against me, or whether he has any religion or not I am unable to say. I have never considered it my duty to pry into the belief of other members of this house. If their actions are upright and conduct just, the rest is for their own consideration, not for mine. I do not seek to make converts to my faith, whatever it may be esteemed in the eyes of my officious friend, nor do I exclude anyone from my esteem or friendship, because he and I differ in that respect. The same charity, therefore, it is not unreasonable to expect, will be extended to myself, because in all things that relate to the State and to the duties of civil life, I am bound by the same obligations with my fellow-citizens, nor does any man subscribe more sincerely than myself to the maxim, "Whatever ye would that men should do unto you, do ye so even unto them, for such is the law and the prophets."



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